

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2944 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PARGI IBRAHIM KALABHAI

Versus

STATE OF GUJARAT

Appearance:

MR AD DESAI for Petitioner
Mr.P.K. Shukla, for Respondents nos.1, 2, 3 & 8.
MR Parghi for Respondent No. 4 & 5.
MR BB NAIK for Respondent No. 6 & 7.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 23/06/2000

ORAL JUDGEMENT :

The matter was called out in the first session.
With a view to give an opportunity to the learned
advocate for the petitioner it was kept back for the

second session. In the second session also at the first call, the learned advocate for the petitioner was not present. Thereafter, in the second call, the matter is taken up for hearing.

2. The present petition is filed against the judgement and order in Revision Application No.SRD/JMN/340/85 by the Additional Chief Secretary (Appeals) dated 28.2.1989. By the said order, the Additional Chief Secretary (Appeals) has rejected the Revision Application and has confirmed the order passed by the Collector dated 6.6.1981.

3. The petition is under Article 227 of the Constitution of India. Therefore, strictly what is to be examined is only the legality of the order of the Additional Chief Secretary (Appeal), Revenue Department. However, as the learned advocate for the petitioner is not present, the facts of the case were also examined and the same are as under.

4. The petitioner, who is the heir of one Ibrahim Kalabhai Pargi has claimed that the land bearing Survey No.60/1 admeasuring 4 acres, 6 gunthas of village Chhitadara, Taluka Meghraj belongs to Ibrahim Kalabhai. The Secretary (Appeals) has set out the facts in detail, which reveal that the originally the land was bearing Survey No.60 and it belonged to one Kalaji Mangaji (grand father of Ibrahim Kala). Said Kala Manga had three sons, namely, Ibrahim Kala, Danaaji Kala and Manga Kala. The share given to Ibrahim Kala is 2 acres, 4 gunthas; while share given to Manga Kala and Dana Kala is 4 acres, 6 gunthas. The land which came to the share of Ibrahim was given Survey No.60/2, whereas the share of Dana and Manga was given the Survey No.60/1. It is also revealed from the judgement and order of the Tribunal that thereafter, Manga and Dana sold their land, by a registered sale deed dated 16th June 1972, to the present respondents nos.6 and 7, and entry no.281 came to be mutated.

5. This sale came to be challenged by Ibrahim Kala, contending that the sale in question was in violation of the provisions of sec.73A of the Bombay Land Revenue Code, 1879 and that no prior approval was taken. Proceedings were taken before the Deputy Collector and the Deputy Collector held that the sale is in violation of the provisions of BLRC and by an order dated 27.2.1976 it was ordered that the land should be given back to the original owners. Against the order of the Deputy Collector, an appeal was filed before the Collector. By an order dated 31.7.1977, the Collector

upheld the order of the Deputy Collector. Against that order, a revision application was filed before the State Govt. being No.SRD/ L&D/ A/ 241/77. That Revision Application came to be allowed by an order dated 28.2.1978. It was held that as per the Circular of the Govt. dated 6.1.1978, the case is required to be decided by the Collector. Hence the matter was remanded. It is also recorded in the judgement that sec.77AA came into force with effect from 1.2.1981. As per the provisions of sec.3(B), a transaction between the parties belonging to Adivasi community between 4.4.1961 to 1.2.1981 stands regularised. In view of that the Collector passed an order dated 6.6.1981 regularising the sale in question.

6. It is further recorded in the judgement that in view of that as the land bearing Survey No.60 originally belonged to Kalaji Manga, which was partitioned on the sad demise of Kalaji Mangaji. On partition, Ibrahim Kala was given share admeasuring 2 acres and 4 gunthas, bearing Survey No.60/2, while the land in question came to the share of Manga Kala and Dana Kala. The same was sold to respondents nos.6 and 7 herein. It is categorically recorded by the Secretary (Appeals) that the present petitioner (Ibrahim Kala) had no right whatsoever over the land in question. The order of the Collector dated 6.6.1981 is in accordance with law and possession of the land in question shall remain with the person who has purchased the same.

7. In view of the aforesaid facts and in view of the provisions of law, this Special Civil Application fails and the same is accordingly dismissed with no order as to costs. Rule is discharged.

23.6.2000 (Ravi R. Tripathi, J.)

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